IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 118 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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GIRISHBHAI ALIAS PIYUSHBHAI UMEDBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 118 of 2001

MR HM PARIKH for Petitioner No. 1-2

Mr V M Pancholi, APP for Respondent No. 1

MR BA SURTI for Respondent No. 2

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 06/04/2002

ORAL JUDGEMENT

The present petitioners have preferred this petition under section 482 of the Criminal Procedure Code, 1973 (for short, 'the Code') for quashing and

setting aside the FIR filed by respondent no.2, herein, before the Dharnidhar Derasar Vasana Police Station, Ahmedabad which has been registered as CR.I.No.169/2000 against the two petitioners herein for offences punishable under sections 420, 465, 466, 467, 468, 471 and 114 of IPC. The contesting respondent has alleged in the said FIR filed on 23.10.2000 that the two petitioners herein have fabricated and forged certain documents and records under the forged signature of the mother of the contesting respondent and false and forged statements were also created and fabricated with a view to show the interest of the petitioner in the properties which are the subject matter of those documents. It is further alleged that wrong and false rubber stamps were prepared and they were used. By the use of those rubber stamps, false and fabricated and forged ration cards were also prepared by the petitioner with an ulterior object of showing their interest in the subject matter in dispute. It is further alleged in the FIR that the present petitioners have forged the signature of the deceased father of the contesting respondent with the aforesaid ulterior motive. It is, therefore, the say of the contesting respondent that the petitioners have committed the aforesaid offence.

2. The petitioners herein have mainly contended that as per the say of the contesting respondent, the aforesaid documents were forged or fabricated for the purpose of production before the Civil Court concerned. That therefore, the court cannot take cognizance of those offences unless there is a complaint by the court concerned against the petitioners. That therefore, the police could not investigate such a case at the instance of the contesting respondent and, therefore the FIR is required to be quashed and set aside. The petitioners, have therefore, prayed that the aforesaid FIR may, therefore, be quashed and set aside.

3. On receiving the petition, urgent show cause notice was issued and in the meantime, interim relief was granted preventing the further investigation in connection with the aforesaid FIR. Learned Advocate for the contesting respondent has appeared and the learned APP appeared for the State. Thereafter on 27.8.2001, rule was issued and interim relief granted earlier was ordered to be continued till further order. In response to the said service of rule, Mr V M Pancholi, learned APP appears for respondent no.1 and Mr B A Surti, learned Advocate appears for respondent no.2. I have heard the learned Advocates for the parties and have perused the papers.

4. The learned advocate for the petitioners has heavily relied upon the provisions made in section 195 of the said Code and has argued that these provisions have not been complied with and therefore, the FIR was not competent and the police officer in charge of the police station could not investigate the case. It is true that uin section 195 of the said Code, there are some restrictions against taking of cognizance of the offences by the court concerned. It can be reproduced for ready reference as follows:

S.195. Prosecution for contempt of lawful authority of public servants for offences against public justice and for offences relating to documents given in evidence (1) No Court shall take cognizance -

(a) (i) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code, or

(ii) of any abetment of, or attempt to commit, such offence, or

(iii) of any criminal conspiracy to commit such offence,

except on the complaint in writing of the public servant concerned, or of some other public servant to whom he is administratively subordinate;

(b) (i) of any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely, sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, or

(ii) of any offence described in section 463, or punishable under section 471, section 475 of section 476 of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding, in any court, or,

(iii) of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in sub-clause (i) or sub-clause (ii),

except on the complaint in writing of that Court, or of some other Court to which that Court is subordinate."

5. On the aforesaid provisions, it has been contended by Mr H M Parikh, learned Advocate for the petitioner that since the documents were required to be produced and since they have been subsequently produced before the Court concerned, cognizance of the offence could be taken only on the basis of a complaint filed by the Court in this behalf. In this case, it has not been done and therefore, the FIR is not competent and the Investigating Officer has absolutely no jurisdiction to entertain the FIR and to proceed with the investigation in question.

6. In my reading of section 195 of the Code, it would not be possible to accept the aforesaid arguments advanced by Mr H M Parikh, learned Advocate for the petitioner. I am of the opinion that the provisions contained in section 195 of the said Code will come into play only when the documents have been produced in the Court and thereafter some mischief has been played with respect thereto. In other words, if the documents have been forged first and if they are subsequently produced on the record of the Court, then the aforesaid provisions contained in section 195 would not be attracted. At the same time, if the documents have been produced in the court and thereafter, they have been forged or some mischief has been played with respect to those documents, then the provisions contained in section 195 of the Code would be attracted and the criminal proceedings can be instituted only in accordance with the provisions made in section 195 of the Code.

7. In this respect, we can refer to a decision in the case of Surjit Singh v. Balbir Singh, reported in AIR 1996 SC 1592. There it has been laid down as follows:

> "For taking cognizance of an offence, the document, the foundation for forgery, if produced before the Court or given in evidence, the bar of taking cognizance under section 195(1)(b)(ii) gets attracted and the criminal Court is prohibited to take cognizance of offence unless a complaint in writing is filed as per the procedure prescribed under section 340 of the Code by or on behalf of the Court. The object thereby is to preserve purity of the administration of justice and to allow the

parties to adduce evidence in proof of certain documents without being compelled or intimated to proceed with the judicial process. The bar of section 195 is to take cognizance of the offences covered thereunder.

In the instant case since cognizance was already taken before filing of the document in the civil Court and the original has not been filed before cognizance was taken, the Magistrate is at liberty to proceed with the trial of the criminal case."

7.1. Another decision relevant and reported on this subject can be gathered from the case of Sachida Nand Singh v. State of Bihar, reported in (1998) 2 SCC 493. In this decision, the Hon'ble Supreme Court has referred the provisions made in section 195 and 340 of the Code. The Supreme Court has also considered the offences punishable under sections 463, 471, 475 and 476 of IPC. After considering the provisions made in the said Code, the Hon'ble supreme Court has finally concluded in the concluding para (para 23) as follows:

"The sequitur of the above discussion is that the bar contained in section 195(1)(b)(ii) of the Code is not applicable to a case where forgery of the document was committed before the document was produced in a court. Accordingly we dismiss this appeal."

It is, therefore, clear that even the Supreme Court has laid down in clear terms that the statutory bar contained in section 195(1)(b)(ii) of the said Code is not applicable to a case where forgery of document is committed before the document is produced in the Court. In the present case, it is the case of the contesting respondent that the documents were first forged and thereafter they were produced before the court. It is not the case of the contesting respondent that the documents were forged and some mischief were played after the production of the document before the trial court. So when the documents were first forged and were then produced subsequently before the Court, bar of section 195 of the Code will not come in the way of the contesting respondent as well as in the way of the Investigating Officer in proceeding ahead with the investigation in accordance with law. No other point has been made out. Therefore, it cannot be said that the contesting respondent could not have filed FIR before the police station. Same way, it cannot be said that the

Investigating Police Officer could not investigate the case. It also cannot be said that the criminal proceedings could be instituted only on the order of the Court in this behalf. In other words, the FIR is competent and the Investigating Officer has jurisdiction and powers to investigate the case in accordance with law. When the position of law is as aforesaid, the present application for quashing the FIR is without any merits and it deserves to be dismissed. Since it cannot be said that the respondent was not competent to file the FIR and the I.O. was not competent to investigate the case, the FIR cannot be quashed.

8. For the foregoing reasons, this petition is ordered to be dismissed. Rule discharged. The interim relief granted earlier stands vacated. The office shall immediately communicate the operative portion of this order to the police station concerned through the court concerned.

6.4.2002 [D P Buch, J.]